



ROMANIA

THE MINISTRY OF NATIONAL EDUCATION

“DECEMBER 1st, 1918” UNIVERSITY, ALBA IULIA

THE DOCTORAL SCHOOL

ACCOUNTING DOMAIN

DOCTORAL THESIS

(SUMMARY)

Ph D Supervisor

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PhD student:

VAJDA GERALDINA - TEREZIA

Alba Iulia, 2018



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**CONTROL STRATEGIES FOR COMBATING THE
PHENOMENON OF CROSS-BORDER TAX EVASION AND
COMMUNITY FRAUD**

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INTRODUCTION

The Issues, the Subject and Research Context

The evolution of society, both in terms of economic and social, as well as multicultural and political, has boosted the crimes of economic nature, context in which economic crime has witnessed a spectacular dynamic. It can be said that the EU (European Union) is currently facing with the import and export of economic crime. The flow of this type of activities is very difficult to follow and control, in particular that of criminal groups have become transnational, and have the ability to adapt quickly to the easy to all the innovations in the Community.

Tax evasion is a separate component of the financial and economic crime, and combating the phenomenon became a principal aim of national and international organizations. Approached from a strictly theoretical perspective, international and/or Community tax evasion has to do primarily with the broadening of production/services activities, i.e. of certain components thereof, belonging to national entities in the States where they benefit from more favorable fiscal and social regulations.

In the doctrine scientific research domain, the analysis and interpretation of concepts regarding tax evasion have had different approaches, some of them strictly related to the taxation domain, others only in the domain of criminal law, and others having technical approaches of accounting nature, so that the definitions that have been given this concept were often contradictory, times inaccurate, precisely due to the interpretation of the notion of only one angle.

The motivation of the choice of the theme “*Strategies for Combating the Phenomenon of Cross-border Tax Evasion and Community Fraud*” resides in the desire to bestow the notions of tax evasion and fraud a multidisciplinary approach, accounting, fiscal and legislative, based on our personal experience in the field. From this perspective, we wanted to study the accounting mechanisms of tax evasion and tax fraud, but also specific creative accounting methods in the context of Community and international mechanisms to combat tax evasion.

From a theoretical perspective, the Ph D Thesis seeks to bring added insight into clarifying the notions of tax evasion and tax fraud, while demonstrating the usefulness of various control methods in combating them.

Moreover, on the ground of the empirical study, it was desirable to present a critical analysis of the shortcomings of the current management systems of Community fraud and cross-border tax evasion, based on which it was possible to formulate a proposal on the implementation of a strategy for managing the risk of Community fraud at the level of management authorities and shaping a general index of the fraud risk. At the same time, the relevance of the approached theme is dependent on the potential future contribution of the approach to developing the level of interdisciplinary knowledge.

The importance of this study lies in the following arguments:

- Contributes to the development of the stage of knowledge in both accounting and taxation and also law;
- Contributes to the conceptual clarification of the notions of licit tax evasion, fraudulent tax evasion, tax fraud, and the understanding of the accounting mechanisms of tax evasion and fraud;
- Performs a presentation of methods specific to creative accounting as the main instrument of tax evasion and fraud;
- Highlights the accounting and fiscal aspects of cross-border tax evasion and Community fraud;
- Make a review of the tools and techniques specific to control strategies for detecting tax fraud and evasion;
- Conduct an empirical research of the risks associated with committing Community fraud and cross-border evasion; in this context, there is an assessment of the risks specific to Community fraud and cross-border tax evasion, i.e. accounting practices specific to the manifestation of the component risks of the community fraud and tax evasion risk on the basis of which a general index of the fraud risk is modeled.

Due to the particular complexity of the phenomenon that manifests itself in this increasingly fierce contemporary period, generating negative effects on all States, namely due to the arguments presented above, we consider the theme of great topicality, its approach requiring perseverance, documentation and special practical experience.

Objectives and Hypotheses Examined in the Context of the Research

The main research directions aimed at systematizing the theoretical notions of tax fraud and tax evasion from an accounting perspective, first and foremost, but also fiscal and legal, but also the presentation of mathematical models to quantify the tax evasion effects, accounting mechanisms and fraudulent financial reporting schemes, as well as the fuzzy modeling of a general index of the Community fraud risk at the level of management authorities.

The main objective of the scientific approach was to identify control strategies for combating cross-border tax evasion and Community fraud, to which a number of other specific objectives were summed up, as follows:

- Conceptual delimitation of notions of economic crime, fraud and tax evasion;
- Identifying the objectives, determinants and potential effects of creative accounting in the context of cross-border tax evasion and Community fraud;
- Determination of optimal control methods for the detection of fraud and tax evasion, namely their specific instruments and techniques;
- Identification of Community and international mechanisms to combat tax evasion;
- Demonstrating the prospect of fuzzy modeling in designing a general index of the fraud risk, designed to ensure the implementation of an effective strategy for managing the Community fraud risk at the level of management authorities.

In the empirical study, the operational objectives were:

- Identification and analysis of the financial-accounting risks related to Community fraud at the level of the Structural Funds and quantifying the effects of these risks by the means of mathematical models;
- Assessing the community fraud risk by qualitative and quantitative methods;
- Developing a risk index for community fraud.

The case study pursued the design of a general audit framework, focused on identifying the specific methods and techniques for detecting Community frauds at the level of European Funds. It relates to the improvement of the internal audit on combating Community fraud at the level of European funding through implementation of specific control procedures at the level of management authorities who are managing the European funds, and which relates to the development of a methodology to detect the fraud potential.

The assumptions of the research were as follows:

I1: The current accounting, fiscal and legislative system is not in a position to provide a suitable solution for combating fraud and tax evasion;

I2: The effectiveness of existing control systems can be increased by creating a new accounting and/or fiscal model.

The Ph D Thesis was structured in five chapters, including four research chapters and a chapter of general conclusions and perspectives of research. During the four chapters, both theoretical and practical aspects were addressed.

The first chapter, “*Theoretical Justifications Regarding Tax Evasion and Fraud*”, is intended to contribute to the research of a phenomenon of such dynamics and complexity as that of tax evasion and fraud in the light of clarifying these concepts in the context of economic crime.

Several forms of crime may be delineated, namely the one affecting the life and/or bodily integrity of the individual, health or virtue of the person, patrimony and/or property, but also to business, on all their components (financial-banking, informatics, etc.). In a generic sense, economic and financial crime aims to maximize profits by illegal means of punishable (crimes relating to companies, banking regime, money laundering, accounting regime, customs regime, etc.).

With a transnational character, the economic-financial crime has gained global dimensions, with negative effects on the economic security of the States. Illegal activities are somewhat similar to those carried out by economic entities in different sectors of activity, some of the profits obtained being reinvested on the black market, increasingly diversified and constantly developing. Then, it is common ground that tax evasion is a component of this phenomenon.

All the definitions of tax evasion also include the element of illegality. The reduction of the taxable mass may be the result of the legislature’s will. As a result, there is a question of the delimitation on the basis of the legality of the forms of tax evasion because there may be other forms of non-taxation which have the effect of diminishing the taxable matter, although it does not put into practice by evading the payment of tax liabilities, and as such, are not tax evasion.

For long time tax evasion has been considered a component of tax fraud. However, the two notions were delineated, in the sense that tax evasion is now considered to include all the manifestations aimed at avoiding the payment of dues/taxes, with two main components: tax

evasion (bidding) and tax fraud (illicit tax evasion). In terms of economic theory, the legal distinction does not have consistency as long as both forms have an evasive character and generates a decrease in budgetary tax revenues of the state.

Referring strictly to tax fraud, this entails an abuse of tax laws, a crime committed in good conscience and deliberate to normative regulations on the payment of tax liabilities.

Regardless of the definition of tax evasion, without just and may, this phenomenon is condemned all over the world and persists despite the anti-evasion measures adopted at national, Community, regional, etc.

The licit/legal tax evasion implies the circumvention of a certain part of what constitutes taxable matter, but without this approach to dress the character of contravention or offense. Essentially, any study addressing tax evasion is required to underline from the outset that the activities leading to its materialization are legal, despite the fact that harm the quantitative dimension of budgetary obligations of payment.

The licit tax evasion has to do with the reduction of dues/taxes rates by means of an eminently legal tax mechanism. It materializes in the context in which the specialists manipulate vulnerabilities or blur legislation in the tax area. Although the modalities used are of a legal nature, their consequences are labeled as defective or abusive. Because of the subjectivism of those who interpret and subsequently apply tax regulations, in certain contexts establishing a clear line of demarcation between licit tax evasion and tax fraud is difficult and sometimes even impossible.

Being in question tax evasion as a legal/licit act, means that it does not imply any criminal activity/operations, although these operations cannot be easily identified. Then we ask the question, does this approach certainly ensure the reduction of tax liabilities? If the activity/operations are identified and appropriate corrective measures are applied, the evasion mechanism becomes ineffective. Responsible for the interpretation of the tax schemes are the courts, the ones to which it relies and the role of limiting such initiatives.

As an extension of the criminal behavioral typology, the idea of tax evasion was launched due to the existence of an intense and also corrupted bureaucratic environment. Theoretical models wanted to highlight the causes of corruption formation by linking variables in the development of this phenomenon to certain levels of reference. Although tax evasion often integrates corruption, cohabiting under perfectly functional conditions, there are major

differences between these antisocial acts. Unfortunately, only economic performance alone cannot provide pertinent explanations of the reason for the loss of public confidence in its own government, but also that more than half of the Community population believes that the only way to succeed in Business in their country is holding political relations, and only a quarter of the European population believes their country of residence is making real efforts in the fight against corruption.

Tax evasion must be addressed at first stage in the manner in which it is committed (licit/legal or fraudulent) and the report of the phenomenon with the legislation in force. Subsequently, the approach can be also spatially transposed, respectively at national and international level. International tax evasion has to do in the first place with the widening of the production/services activity, respectively, of some of their components, belonging to national entities in the States where they benefit from fiscal and social regulations much more favorable. The European Union defines the tax evasion patterns that have an effect on its own income through the Community Acquis in the area of tax evasion and treats distinctly the problem of preventing tax evasion, which is one of the main objectives of its tax policy. The Community Acquis on tax evasion is primarily aimed at VAT avoidance schemes, of taxes related to production and imports.

The information provided by the accounting is the main source of clues regarding a possible evasion mechanism or scheme. However, the accounting information does not, in itself, represent a sign of a potential evasion because only a complete, logical and systematic documentation of compliance with legislation and accounting policies can generate the necessary clues to investigating the evasion phenomenon.

The accounting mechanism of tax evasion and fraud is a concept distinct of the creative accounting, the latter assuming its role of handling vague or inconsistent accounting and/or tax regulations. We believe that the notion of creative accounting can be used in the context of managerial or management accounting, where there are possibilities to “create”, as opposed to financial accounting (or information provided by the accounting), which is standardized and limited to a number of regulations, principles and accounting policies.

The mathematical model presented at the theoretical level in the latter part of the first chapter focuses on the idea of maximizing the chance of fully using the income achieved during

its development of an evasion strategy¹. The purpose of initiating an evasion strategy is evident, avoidance of taxation, a context in which the entity will benefit from much higher income than they would benefit from after taxation.

Chapter Two, “*Creative Accounting, the Main Instrument of Accounting and Tax Evasion and Fraud*” addresses objectives, determinants and potential effects of creative accounting in the context of committing tax fraud and evasion.

Even if the definition of creative accounting is not unique, all definitions have as main elements the use of the knowledge and skills of accountants in order to manipulate the results using existing gaps in the normalization legislative systems.

We consider that the main cause of the emergence of creative accounting practices is the differences in information needs of users of accounting information (investors, employees, suppliers, customers, creditors, and State institutions, public) and the purposes they have in using this information. Creative accounting techniques can be used with the help of the conceptual accounting framework or by violating it. Creative accounting can be used to create a true and faithful image, but only from the perspective of certain users, the management of the results and the form in which they are presented to serve the interests of management, providing a cosmetically altered image of the financial position and economic outcomes, voluntarily committing accounting and tax fraud.

The most important reason when creative accounting techniques are used is to report smaller financial results in order to reduce the amounts owed on taxes and fees or to produce tax evasion. Another reason is the desire to improve the entity’s image in the future by presenting the current year of a loss greater than the real one. One more reason is to ensure a positive vision of the evaluation of the entity’s actions and to reduce the risk of negative signals on the course of actions based on the assessments made by financial analysts. Creative accounting can be used to manipulate profit when there are budgets that have not been really achieved and which can affect the managers’ performance, or when they want to finance the activity through various sources.

An effect of practicing creative accounting is covering fraud and masking financial scandals, because it is very difficult for financial statements’ users to be able to analyze in detail the results that are offered – whether they don’t possess the necessary knowledge or have no

¹ Allingham M.G., Sandmo A. (1972), Income Tax Evasion: A Theoretical Analysis, Journal of Public Economics 1 (1972) 323-338, North-Holland Publishing Company, p.323-338

access to the data underlying the financial statements. The mechanism for using creative accounting techniques refers to the alteration of the value of a particular patrimony element, which has as consequence the distorted reflection of that value, either in the profit and loss account, or either in the balance sheet.

The main fraudulent financial reporting schemes refer to the undervaluation of income and the erroneous presentation of stocks, to which other schemes for the valuation of assets, liabilities and receivables or other schemes are added. The smoothing of results, another creative practice, aims to reduce the variations in accounting results, desiring to provide a relatively constant level of financial results over several financial years.

Revenue management as a method of applying creative accounting takes place when managers have a specific target on which for objective or subjective reasons they must achieve it. The simplest technique of applying this method is to choose the moment of sale of an asset depending on when the profit is to be recorded. Another technique relates to the registration of exceptional expenses that belong to more than one financial year only in one, as the production of that exceptional event may serve as the basis of justification for the entity's low performance in that year.

Typical community fraud involves the use of an economic circuit consisting of VAT-paying entities and having different functions. Committing this type of fraud requires the existence of a phantom entity, which does not carry out economic activities, but which is used only for intra-Community acquisitions and the registration of the deductible value added tax. Other methods of VAT fraud are the fictitious intra-Community deliveries and cash & carry schemes.

The main ways of limiting creative accounting are represented by: International Accounting Standards and International Financial Reporting Standards, corporate governance, promotion of ethical and moral values. But the resourcefulness for finding the optimal methods of committing fraud, enriching the subcomponents of used methods with changes in the regulation of taxation knows no borders, the desire for wealth being superior to the fear of risk.

The third chapter, *“Control Strategies, Community and International Methods and Mechanisms for Preventing and Combating Tax Fraud and Evasion”* addresses, in addition to the conceptual aspects of control strategies for combating tax fraud and evasion, a number of general and special control methods for detecting fraud and tax evasion. This is about control and

audit activities, external financial and fiscal control, as well as a number of tools and techniques specific to control strategies aimed at detecting tax fraud and evasion.

The technique of conducting checks carried out by tax inspectors necessarily implies the application of the appropriate method of the type of activity carried out by the controlled entity, the multitude of processes of tax control can be combined in according to the intended purpose. Common methods of control may be combined with specific verification techniques and which have as prior procedure the general study of the activity (which can be carried out on the basis of data held on the computer platform of the tax authority), followed by the control of the documents underlying the manner of declaring the activities carried out. There may then be inventory operations when the entity declares staggered payments or commodity stocks, and in case of suspicion occur the tax body will be able to order and conduct specialized expertise (e.g. for finding documents' falsifications) or laboratory examinations, also being checked and account statements by which the trader has conducted operations of receipts and payments.

On the occasion of the tax control, the most significant documents and books which reflect the taxpayer's tax status, any mismatches, leading to the necessity of conducting a more thorough control in order to identify the sources of these inaccuracies and to bring up, where appropriate, the existence of evidence of illicit acts of evasion nature.

If in the case of falsified justification/supporting documents, or issued by entities without activity, with suspended or even radiated activity, the situation is clear, proving tax evasion is not a difficult operation, the same cannot be retained when the accounting evasion techniques become more sophisticated, there is a need for enhanced expert knowledge of the control body in order to detect these special techniques.

The need to create support for the free development of trade relations, with benefits for both its own taxpayers and the domestic, Community and international economy has led to the creation of an international mechanism based on different conventions or treaties whereby the signatory countries have ordered regulations on the problem of tax competition and implicitly to combat tax evasion by: Conventions and Treaties to avoid double taxation, interstate exchange of tax information, Regulations on Holding companies, transfer pricing. In the European Community, tax evasion and, in particular, tax fraud have been governed mainly by means of Directives defining the *Acquis communautaire* on this area - considered sensitive - due to the

need to create a stable framework of tax levies necessary for the proper functioning of the Community.

Chapter four, “*Practical Ways to Improve the Control Methods for the Prevention of and the Fight against Community Fraud and Cross-Border Tax Evasion*” is dedicated to the empirical study. We believe that the identification and evaluation of the fraud risk’s components is the central pillar of control or audit actions, which cannot define their objectives without knowing the potential risks. That is why, in the framework of applicative research, we have developed a case study aimed at improving control strategies in the field of combating Community fraud. This seeks to conceive a general framework of the audit, focused on identifying specific methods and techniques for detecting Community fraud at the level of European Funds.

In order to identify the most important components of the risk of producing Community fraud, in particular in the financial-accounting area, a quantitative research has been carried out; the method used being the opinion poll achieved through of the questionnaire technique. The results of this quantitative research have also been used to assess the probability of specific risks occurring, which is described in the following subchapter.

The questionnaire (Annex 1) was developed on the basis of the list of risks identified by the EC (European Commission) as being related to Community fraud, to which linguistically associated a probability of occurrence (very certainly to manifest, almost certainly to manifest, very likely to manifest, probably to manifest, unlikely to manifest, almost certainly not manifested). The questions asked were of opinion and were closed questions.

The questionnaire was applied to a number of 200 subjects, working in the business field either as an employee of the financial-accounting department or as business owner. The choice of subjects had regard both the registration of the opinion of the staff directly involved in the accounting activities of entities and those of persons with decision-making functions in the entities’ activity.

The data obtained has been processed using the Microsoft Excel application. The first step was to quantify the number of responses related to each linguistic value associated with the risks. Subsequently, the percentage value of each linguistic value was calculated by reporting the number of favorable responses to the total number of respondents. With the help of the mathematical operator MAX followed the calculation of the maximum value of all the values

obtained, based on which a ranking of risks was made. This risk ranking has been used to identify a number of ten main risks, which we considered sufficient in later mathematical modeling. For the first four probabilities of occurrence values (very certainly, almost certainly, very probable and probable) two risks were chosen with the percentage of maximum occurrence, and for the remaining values (unlikely and improbable) a risk was chosen with maximum probability of occurrence.

We have synthesized ten risks that we considered important and have been attributed a probability of occurrence. The second characteristic associated with these risks was the probability of impact or occurrence of their consequences, which was determined using the Monte Carlo stochastic simulation method.

In order to be able to create a risk hierarchy, we have developed a reference framework, both qualitatively and quantitatively, for assessing or characterizing the component risks of the risk of fraud. The risk with the highest probability of occurrence is corruption, a sustained result and the statistics at European level that rank Romania on one of the first places regarding this risk. The immediate next risk likely to manifest itself is the disclosure of confidential information, which we consider to be a risk associated with corruption, or which is influenced by it.

The first step in implementing a risk management strategy for Community fraud is to identify those funds with high potential for fraud. To this end, we considered it necessary to determine an index of the fraud risk.

The next step in implementing the fraud risk management strategy is the delimitation of the general control procedures specific to each risk. Thus, on the basis of the synthesis of the information obtained by consulting the bibliographic sources assessed as relevant in the area of the topics addressed, we identified the specific audit arrangements for each risk specific to Community fraud.

The third step in implementing a fraud risk management strategy is the strategic planning of internal audit, depending on the audited activities. Thus, for each activity presenting a high risk of fraud, it is necessary to identify the specific risks and ways of preventing and combating them.

The purpose of modeling an index of fraud risk was to cover situations where the risk of corruption is manifested within the management authorities, and the use of this indicator in

identifying financing projects that have a high degree of fraud Risk, and which subsequently will be audited. We believe that such an index is an important, non-existent at present, control instrument, which could be successfully developed and implemented, facilitating the work of the personnel responsible for internal control or audit.

A common tool used in analyzing risks for which there is insufficient historical data is vague logic or fuzzy logic. This allows the modeling of a risk index associated with the production of Community fraud taking into account two or more main risks, which in turn possess a number of specific manifestation indicators.

The innovative character of research is represented precisely by this fuzzy index. The model presented is a general one for understanding how this modeling tool, the fuzzy logic, can be applied to estimate the degree of risk associated with a certain risk factor. However, the model may be extended to analyze several risk factors for a certain stage of the financing projects, or to analyze the risks related to the various activities or stages of funding (selection of candidates, application and verification of operations, certification of activities, making payments, making purchases, etc.).

Research methodology

The overall research methodology was based on three general types of research, namely: fundamental research, applicative research and empirical research. Unlike applicative research, which seeks to identify solutions that can allow the explanation of theoretical models applied, the basic research seeks theoretical modeling of certain phenomena.

The Ph D thesis is based on a thorough consultation of the legislation in the field of accounting and taxation, but also of the law applied, both internally and externally/internationally, but also on the study of systematized collections of representative data.

The analysis of the legislation was carried out by consulting the database of EUR-Lex, the database available on the Internet of the European Union, the Council of Europe, and the consultation of the existing database on the official web pages of the Ministry of Finance, National Agency of Tax Administration, Ministry of Justice, Ministry of Internal and Foreign Affairs, European Court of Justice.

The study of literature was accomplished by studying the articles and works available in both the academic and national editions, but also those available in the online environment.

The statistical data were studied and analyzed on the official websites of Eurostat, and the National Institute of Statistics, the data obtained being filtered out in terms of relevance and the link with the studied topic.

From the point of view of the scientific research methodology, traditional methods of research have been used in the preparation of this work – questionnaire, analysis, synthesis, induction and deduction, analogy and comparative analysis, statistical methods of mathematical modeling.

By this endeavor, through the methods of analysis and research used, the author did not propose to fully clarify the subject of fraud and tax evasion – impossible fact because this is an ample, constantly changing and adaptive phenomenon, so that the theme approach was done more particularly with a view to the practical application of the theory of accounting and taxation in the fight against this phenomenon, the more so as exacerbating the phenomenon of cross-border tax evasion leads to increasing difficulties in finding the most appropriate and effective methods of controlling and combating tax evasion.

GENERAL CONCLUSIONS. THE PERSPECTIVES OF RESEARCH

General Conclusions

The aim of this approach within the framework of the Doctoral School was to research from a theoretical and applicative point of view the possibilities of improving the control strategies to combat the phenomenon of cross-border tax evasion and Community fraud.

Following the completion of the research resulted two categories of conclusions: conclusions related to the theoretical study and conclusions related to the practical applications.

Conclusions related to the theoretical study

The first part of the theoretical study focused on the study of legal and illicit tax evasion.

A first conclusion relates to the fact that the lack of clear provisions of tax legislation allows taxpayers, natural or legal persons, to circumvent within the limits of legality from the payment of dues and taxes, the State being unable to protect itself in the absence of bringing significant improvements to legislative acts as well as control procedures aimed at halting legal evasion. One of the important factors in favour of tax evasion is corruption, which, along with the lack of professional competence of the personnel involved in the tax inspection, contributes to the failure to detect all acts of evasion. The main practices identified as being most commonly used in the practice of legal evasion relate to the reinvesting of profits in goods that are not necessarily needed for the work of taxpayers, the exploitation of legal provisions on donations or amounts for protocol activities, excessive payment, reserve formation above the limits laid down by law, the fictitious purchase of goods with a high value.

The creativity of taxpayers is very high as regards the exploitation of legislative deficiencies, and their prevention cannot take place in the absence of correcting and complementing existing provisions in financial-fiscal matters. The main culprit for maintaining the existence of legal evasion is the legislative body, which has a passive attitude motivated or not, in terms of the clearer regulation of this area.

As regards illicit tax evasion, the accounting mechanisms for its production are numerous, and it is virtually impossible to identify them completely. However, a number of common mechanisms may be identified such as diminishing the accounting results resulting from diminishing income or increasing expenditure, the use of fictitious companies when making imports, omissions in declaration of imported goods, refusal to issue tax documents on cashed income, falsification of tax documents, creation of artificial accounts, lack of application of taxes for benefits to employees. Generally, the accounting mechanisms used in the production of evasion are simple, which does not mean that their detection is just as easy. The main instrument in its detection is the analysis of the accounting information, but it is necessary the existence of people carrying out controls that possess the necessary knowledge of the efficient and effective analysis of this accounting information.

There are a number of mathematical models to quantify the effects of tax evasion, starting from the classic function of economic utility that characterizes the escapist person's desire to maximize the obtained revenues. An equation may also be generated to estimate the probability to commit tax evasion in relation to different variables, such as the level of taxation and the effects of its variation, the probability of a tax check, the modification of applicable sanctions or corruption of tax officials. The conclusions obtained according to the model of evasion applied and relative to the restrictions imposed on it are clearly different. Excessive taxation may result in increased undeclared work or an increase in penalties may result in reduced tax evasion.

One of the main instruments used in producing accounting and tax evasion and fraud is creative accounting, whose definitions are multiple. We believe that a relevant definition is the fact that creative accounting is the sum of all accounting practices, including those at the boundary of legality, aimed at presenting an improved image of the financial position and economic performances of the entity, and which does not respect the principle of the true image. Creative accounting can be seen as a tool for manipulation of the financial results, which has proven to be used since ancient times. The essence of the practice of creative accounting is to manipulate accounting records by decreasing or increasing the values posted in the general ledger.

The positive approaches of creative accounting concern it as an adaptation of accounting practices and policies to the continuing transformation of the economic or political environment, aimed at presenting a true image of the economic entities' financial position and results. This positive approach does not find its basis in practice, where the majority of cases of fraud and tax evasion have been based on practices belonging to creative accounting. A first conclusion of the analysis of the creative accounting practices refers to the establishment of the main cause which led to the emergence of creative accounting, namely the existence of significant differences between the various informational needs specific to each category of financial information users.

The analysis of accounting principles has enabled the conclusion that the practice of creative accounting is facilitated by the phrase – reasonably – used repeatedly in the accounting regulations in force and which are harmonised with the European ones. This phrase tolerates or permits an increased level of subjectivity of accountants, which is not possible to be monitored or controlled by normalisation.

The managers' decision to practice creative accounting can be based on the purpose of achieving internal objectives or expectations or pressure belonging to the external environment, on the desire to provide a constant picture of performance, on the need to access loans or funding, or on the willingness to reduce tax obligations.

The main contributing factors of the practice of a creative accounting concern the flexibility of accounting regulations, the lack of coverage of the vast accounting area by existing legislation, the moment when the realisation of the transactions take place or managers' subjectivity and their level of authority as regards decisions on coverage of economic operations carried out. As the main motivations of the practice of creative accounting, studies have identified the remuneration of managers and the value of interest conflicts' costs.

The main effects of the practice of creative accounting relate to the distortion of economic and financial results, masking financial scandals or concealing frauds.

As specific methods to creative accounting have been identified the possibility of choosing an accounting assessment method from several methods, the permissible use of estimates and professional judgments as well as forecasts in the preparation of financial statements, the possibility to manipulate temporary differences or to record artificial transactions designed to distort the accounting information. The main mechanism for applying creative

accounting techniques is to change the value of a patrimonial element which results in the lack of fidelity of that value reflected in the financial statements.

Fraudulent accounting reporting schemes are based on a subvaluation of revenue, misvaluation of stocks, overvaluation of assets or undervaluation of receivables and debts.

The smoothing of income is another practice of creative accounting aimed at diminishing the differences between the accounting results of several periods. This technique is practiced when the leadership consider necessary a reduction in investor perception in terms of the risk of their investment. The smoothing of the revenue is possible in particular by handling the provisions, which generates a translation of profits from one financial year to another. Another way of applying creative accounting is income management, which can be practiced by the subjective choice of the moment at which assets are sold, or by accounting for advance expenses as exceptional expenses of a single period.

The use of creative accounting in committing tax fraud occurs when the tax base is artificially diminished by undervaluation of returns or over the valuation of expenditure, or in the case of Value Added Tax by overvaluation the deductions or undervaluation of taxable transactions. For wages taxes, the procedure of non-inclusion in the taxable amount of employee income or payroll is applied erroneously.

At Community level, the most common evasion practice is in the area of Value Added Tax, and which is committed by avoiding the partial or total payment of this tax or by requesting illegal refunds.

As the main ways of limiting the practices of creative accounting have been identified the legal regulations that are harmonised with international standards of financial reporting, corporate governance that manages and controls the economic entities, promoting ethical and moral values within entities.

The alarming odds that fraud and tax evasion have achieved, both at national and Community and international levels, make the accounting and fiscal control strategies that can prevent or combat these phenomena to be a primordial topic of theoretical and practical studies. The main ways of controlling headed to prevention of tax fraud and evasion are the internal control activities as well as internal and external audits, which are the main ways of managing risks.

As the main instruments of internal control to combat tax fraud and evasion have been identified the methods to control the entities' financial resources, aimed at assessing how it is recorded and permanently monitored the revenue and expenditure budget, the way in which the verification of the accounting documents and their registration is carried out and the verification of the provenance of both expenditure and revenue.

Other methods of combating the escapist phenomenon relate to external financial and fiscal control. Financial or preventive control is the state-owned instrument for checking the ways of using public money within its institutions or those financed by the State budget, and tax control is the way the administration verifies the accuracy or fairness of determining the value of dues and taxes owed by taxpayers – natural or legal persons.

One of the conclusions resulting from the analysis of how the tax inspection is carried out relates to the fact that a specialist conducting the inspection cannot be independent and impartial towards all parties involved in a criminal process, due to the ANAF establishing as a civil party, and the employment relationship between this specialist and ANAF.

At the Community level, the main mechanisms for combating tax evasion are Conventions and Treaties for the avoidance of double taxation, the exchange of interstate tax information, the specific regulation of Holding companies and the regulation on transfer pricing. As regards the regime of Holding companies, Romania does not have special legislation for regulating these types of entities, and there is only one law project.

The phenomenon of globalisation offers both opportunities for economic development, as well as the possibility of internationalisation of economic crimes, especially through the possibility of fiscal optimization using tax havens. The fight against Community tax evasion must take into account the reconsideration of trade policies, which must provide greater openness to the harmonisation of progressive schemes of cooperation with other areas, but also to reconsider the theories supporting the co-existence of international trade and fiscal policy. The main criticism of the current Community regulations relates to their rigidity, as well as to their forced and artificial imposition to the Member States.

The Member States' initiative to extend the adoption of rules on fiscal transparency is an important step towards normalising and eradicating cross-border and international tax evasion through tax havens. The exchange of information is thus a primary premise of the correct establishment of gains and the practice of effective, non-discriminatory taxation.

The various reports or even studies of tax administrations reveal the private fraud techniques, but there are no recommendations on technical measures belonging to financial policies that can be used, which makes the sanctions applied to taxpayers to be reliable only in the short term. There is a need for these reports to have sections aimed at medium and long-term operational proposals.

At the level of management authorities, it is necessary to define a clear audit strategy, explicitly aimed at Community fraud and specifying the mission, vision and objectives of the strategy. This strategy must also incorporate all the recommendations of the European organizations in the area of combating Community fraud.

Conclusions and recommendations related to the case study

The case study in the field of accounting identified the main audit methods and techniques necessary to combat Community fraud, namely:

- Detailed analysis of the risks related to community fraud;
- Identification of the components of each major risk;
- Use of risk assessment instruments;
- Identification of the audit trail specific to each stage of the financing projects;
- Identification of internal controls necessary for the implementation of an effective strategy to combat Community fraud.

As recommendations on improving the management of fraud risk at the level of management authorities, we suggest:

- The implementation of procedures for the periodic verification of the fraud risk, specifying explicitly the periods at which such checks must take place;
- The design of a general framework of fraud screening policies that will detail each existing policy, the method of implementation and monitoring;
- Constant, periodic information of staff on the results of the enforcement of anti-fraud policies and the education of staff for the effective implementation of these policies;
- Continuous monitoring of internal control processes;
- The existence of a clear policy on how to respond to the identification of a suspicion of fraud and the monitoring of how it is applied.

The identification of a balanced method of lawmaking that is able to limit taxpayers from avoiding the payment of tax liabilities is a difficult goal to achieve. The existence of legislative measures comprising serious penalties does not favour diminishing the phenomenon of evasion but on the contrary, leading to its exacerbation, whether it be its manifestation at national or Community level. The success of implementing legislative measures will exist when the balance point is found between ways of defending social values and budgetary resources and understanding granted to taxpayers. The main objectives to be pursued when combating the evasion phenomenon or fraud, both at Community and national level, must be the existence of clear and detailed provisions which cannot be interpreted and which do not change over time.

Although the existence of national or Community budgets is conditioned by the existence of revenue relating to dues and taxes, taxation as a practice or tax values is an ample subject approached in economic studies, and the approaches on its necessity is sometimes antagonistic. Such a model is offered by researcher M. Baudeau, who considers in the year 1967 that the universal tax system is based on the lack of reason, assertion that retains its validity in the current context.

We consider that modern taxation is not based on a fair rationality, the fiscal policies promoted at Community level being incapable of diminishing tax fraud or evasion. Furthermore, the complicated European legislative system makes it very difficult to implement at national level, both from the perspective of financial and time resources. Proposals for implementing various strategies to combat Community fraud or tax evasion relate to intervals of 3, 4, 5 years or sometimes even more. Given the dynamics of political, economic and social change, it is easy to conclude that there is a considerable risk of failure in implementing these strategies.

In this context, it becomes even more important to identify the generator factors of evasionist or fraudulent behavior. As defined, the behavior of evasion is the result of errors and inaccuracies of the legislation and the modalities of its application and the lack of clear legislative provisions.

The institutional factor is of very high importance in generating the evasion phenomenon, as it is the main inducer of a lack of fiscal equity through the discriminatory application of legal provisions or due to the non-existence of a balance and transparency between the taxpayer and the official institutions.

Legal provisions should not be based solely on legislative practices, but also on ethical or uniform application practices, and at the same time the legislation must be both accessible to the litigant and foreseeable in relation to its effects. Thus, legal regulations must be clear when referring to the way in which authorities can manifest their own power of appreciation, in relation to the purpose pursued to protect the individual against the randomness.

Another conclusion relates to the reconsideration of the position of the tax official by removing the risks of abuse or negligence in the service.

On fiscal policies transposed into practice by adopting laws in the field of dues and taxes these must:

- respect decision-making transparency in their adoption,
- provide stability in the work of the recipients of the law by avoiding unexpected legislative changes,
- contain punitive and prohibitive provisions consistently coupled with the current social and economic situation,
- be phased in an intelligible and accessible manner, while allowing the correction of individual who committed acts of tax evasion,
- be correlated according to the needs of all socio-economic categories, but to be omitted as far as possible the selective and discriminatory tax facilities, which trigger a significant degree of dissatisfaction among the individuals who will be in these conditions and more willing to evasionist temptation.

The reform process must have as a starting point the concept that the law is equal to each individual, not only in terms of supportability, but also from the point of view of responsibility, tax imposition becoming equally equitable for each economic subject by readjusting fiscal policies and social contributions, with a gradual decrease in the idea of social solidarity.

I believe that an opportune measure towards combating tax evasion is the establishment of *tax courts*, independent of civil courts, led by magistrates with expertise in the financial-fiscal area. In this way, the trial period, which can now be stretched over several years, would be reduced considerably, and the state would be advantaged by the faster collection of stolen budget revenues of evaders. Also, the legislative shortcomings could be seized in an operative manner and could be corrected in due time.

The weakness of fiscal institutions is retained as one of the causes of encouraging and increasing the escapist phenomenon, and consists mainly of the faulty and incomplete application of the law adopted in this respect, finally creating a generalized increase of the extent of criminal facts even if the tax pressure were to diminish.

Personal Contributions

Personal Contributions in the area of theoretical research refer to the innovative nature of the interdisciplinary approach of the studied topics cross-border tax evasion and community fraud, analysed from accounting, fiscal and legislative perspective.

Based on a broad documentation that has been carried out on the literature and current legislation, theoretical research has thoroughly analysed the notions addressed, both from the perspective of the three previously mentioned dimensions and also from National, Community and International perspective. We consider this approach as a novelty, because the majority of existing studies are aimed at analyzing cross-border tax evasion and Community fraud in a single perspective. This type of approach has also been facilitated by author's expertise in both economic and legal matters.

The personal participation brought through the results of the theoretical research presented in the first three chapters refers to the systematization of theories relating to accounting fraud and tax evasion. During the realization of theoretical research, a large number of bibliographic references were studied, consisting of articles and specialized works, national, communautaire and international legal regulations, web resources, the results of the study being obtained by the synthesis of the results on the concepts addressed and the development of the conclusions that substantiated the need to improve control methods in order to prevent Community fraud and cross-border tax evasion.

Another personal contribution to the achievement of theoretical research is the comparative analysis, permanently carried out between national and Community regulations, emphasizing their shortcomings.

The personal contribution brought by the applied research relates both to the accounting area and to the legislative area.

From an accounting perspective, a general framework of internal audit was designed targeting the fight against Community fraud, and a model was proposed to evaluate the fraud risk by means of an index modeled using fuzzy logic elements.

The design of the general framework of the anti-fraud audit at the level of European Funds focused on identifying the most effective methods and techniques of detection of community fraud, as well as on the identification of the deficiencies of the current prevention system and comparison of Community fraud in order to provide recommendations.

From a legislative perspective, opinions have been issued proposing a relaxation of the legislation on combating tax evasion based on the implementation of certain causes of impunity, as well as the establishment of a minimum threshold of penalties related to tax evasion. Such a legislative amendment doubled by fiscal relaxation could ensure success in diminishing economic crime acts. At a first interpretation, this approach could be considered wrong, the diminishing of penalties being an element that would incite taxpayers to commit tax crimes. But the previous experiences of the Community States in which austerity programmes were implemented by increasing the tax rate or by raising penalties for committing economic crime did not result in increasing the level of budget revenues, but on the contrary have led to increased tax evasion. An explanation of this could be not the personal motivation of raising wealth but the need for survival in a burdensome economic-social context. Also, another important consequence of the tightening of taxation (also manifested in Romania) in conjunction with the increase of penalties was the bankruptcy of small firms and individual enterprises, whose gain was drastically diminished. Thus, contrary to expectations, the effects of the tax regulations introduced had the effect of decreasing budget revenues, and certainly not increasing them.

The Perspectives of Research

- Designing a structured Fraud Audit Guide to address all activities related to project financing;
- Improvement of the risk index for Community fraud by including a wider category of risks;
- Designing a computer program for calculating the risk index;

-Improving the proposed legislative model and disseminating the results in order to know its advantages;

-Conducting a theoretical study to quantify the effects of possible implementation of the proposed legislative model.

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